

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNI-CON FLOORS, INC.)	
)	
Plaintiff)	
)	
v.)	C.A. No.: 05-10463 NG
)	
BRICKLAYERS & ALLIED CRAFTSMEN)	
UNION, LOCAL 3 – EASTERN)	
MASSACHUSETTS)	
Defendant.)	
)	

DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

NOW COMES Defendant Bricklayers and Allied Craftsmen Local 3, Eastern Massachusetts, and moves to strike Plaintiff Uni-Con Floors, Inc.'s Memorandum in Opposition to Defendant's Motion for Summary Judgment and supporting documentation because Plaintiff's Opposition was not timely filed. As grounds for its Motion, Defendant states as follows:

1. On November 16, 2005, Defendant filed its Motion for Summary Judgment, Memorandum of Law, Statement of Undisputed Material Facts, and affidavits in support of Defendant's Motion for Summary Judgment.
2. Pursuant to Local Rule 7.1, Plaintiff's Opposition to Defendant's Motion for Summary Judgment was due no later than December 5, 2005.
3. On December 28, 2005, a Scheduling Conference was held before Hon. Leo T. Sorokin, United States Magistrate Judge. Attorney David Fleury, counsel for Defendant, failed to appear in person for the Scheduling Conference, prompting the Court to call Attorney Fleury on the telephone.

4. Attorney Fleury thereafter participated in the Scheduling Conference via telephone. Attorney Fleury claimed oversight as the reason for his not having appeared for the Scheduling Conference and for not having filed an Opposition to Defendant's Motion for Summary Judgment within the time limits set by Local Rule 7.1.
5. At the conclusion of the December 28, 2005 Scheduling Conference, Hon. Leo T. Sorokin issued the following Order: "Plaintiff shall file his opposition to Defendant's Motion for Summary Judgment by the close of business January 6, 2006. No extensions in this date will be allowed."
6. Plaintiff did not file its Opposition to Defendant's Motion for Summary Judgment by the close of business on January 6, 2006, but rather filed its Opposition on January 10, 2006.
7. Plaintiff did not serve Defendant with its Opposition by the close of business on January 6, 2006.
8. Plaintiff's counsel never filed a request with the Court, nor asked for Defendant's assent, to file a late Opposition to Defendant's Motion for Summary Judgment.
9. This was the second time that Plaintiff failed to abide by the time limits set forth by the Court for filing its Opposition to Defendant's Motion for Summary Judgment, and the Court's Order dated December 28, 2005 specifically stated that no extensions to the January 6, 2006 deadline would be extended.
10. Courts have granted a party's Motion to Strike a late filed Opposition to a motion for summary judgment. See: *Mosley v. Meristar Management Company, LLC*, 137 Fed. Appx. 248 (11th Cr.)(June 23, 2005). (Court rejected out of time

opposition and accompanying affidavits from a *pro se* plaintiff where she filed her opposition four days late, her cross-motion for summary judgment eighteen days late, and neither asked for an extension of time to file a response, nor explained why her opposition was tardy).

WHEREFORE, Defendant respectfully requests that the Court strike Plaintiff's Opposition to Defendant's Motion for Summary Judgment.

Respectfully submitted,

For Defendant Bricklayers and
Allied Craftsmen Local 3
Eastern Massachusetts

By its Attorney

/s/ Jonathan M. Conti

Jonathan M. Conti, BBO#657163
Feinberg, Campbell & Zack, P.C.
177 Milk Street
Boston, MA 02109
(617) 338-1976

Dated this 13th day of January 2006.

Certificate of Service

I, Jonathan M. Conti, counsel for Defendant Bricklayers and Allied Craftsmen Local No. 3, Eastern Massachusetts, hereby certify that on this date I served a copy of the within document by first class mail, postage prepaid, to David M. Fleury, Esq., Carmichael & Zajac, P.C. 170 High Street, Taunton, MA 02780.

Dated this 13th day of January, 2006.

/s/ Jonathan M. Conti
Jonathan M. Conti